

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CLYDE W. AND FLOREAN HALE)

For Appellant: Clyde W. Hale,
in pro. per.

For Respondent: Michael R. Kelly
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Clyde W. and Florean Hale against a proposed assessment of additional personal income tax in the amount of \$1,086.32 for the year 1977.

Appeal of Clyde W. and Florean Hale

The question presented by this appeal is whether respondent's determination, based on a federal audit report, was correct.

Appellants filed a timely 1977 California personal income tax return. Respondent later received a federal audit report which made several adjustments to appellants' 1977 federal income tax return. Among the adjustments was an increase in the amount of **capital** gain received by appellants. This capital gain adjustment is the only one challenged by appellants in this appeal.

Appellants apparently do not dispute the amount of actual gain received, as shown on the federal audit report, but disagree with respondent's computation of the amount of that gain which was taxable. Appellants state that the federal audit report increased their taxable capital gain by only \$8,313, while respondent increased their taxable capital gain by \$10,807.

Appellants' challenge is **unfounded**. The difference between the federal and state increases in taxable capital gains arises solely because of differences between federal and state law. Appellants reported their capital gain on their state return as gain from the sale of capital assets held more than one but less than five **years**. During 1977, section 1202 of the Internal Revenue Code provided that 50 percent of these types of capital gains were taxable. For state income tax purposes, however, 65 percent of the amount of these gains were taxable. (Rev. & Tax. Code, § 18162.5.) Applying the respective federal and state percentages to the same amount of actual capital gain will naturally result in a **larger** amount being taxable by California than by the federal government.

Appellants have not shown that respondent erred in following the federal audit report and applying California law to the figures shown therein. Respondent's action, therefore, must be sustained.

Appeal of Clyde W. and Florean Hale

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Clyde W. and Florean Hale against a proposed assessment of additional **personal income** tax in the amount of **\$1,086.32** for the year **1977**, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of August , 1983, by the State Board of Equalization, with Board **Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

<u>William M. Bennett</u>	,	Chairman
<u>Conway H. Collis</u>	,	Member
<u>Ernest J. Dronenburg, Jr.</u>	,	Member
<u>Richard Nevins</u> - -	,	Member
<u>Walter Harvey*</u> - -	,	Member

*For Kenneth Cory , per Government Code section 7.9